IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7106 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order mad
JJJJ

#. The detention order dated 12-4-1999 passed by respondent No.1 - The Commissioner of Police against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged in the present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-C interalia indicates that the prohibition case against the petitioner was registered at Danilimbada police station 5-4-199 vide C.R. No : 5059 of 1999 and Indian made Foreign Liquor was seized from the possession of the petitioner. That the petitioner was arrested and had remanded in judicial custody since 5-4-1999 till the date of passing of the order.

#. That the two witnesses on assurance of their anonymity have given statement regarding prejudicial activities of the petitioner detenu vide statement dated 7-4-99. The witnesses have referred to alleged incidents dated 18-3-1999 and 26-3-99 respectively. That on the basis of the said material, respondent No.1 has come to the conclusion that the petitioner is bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, detention order is necessary and hence the impugned order is passed.

#. It is also submitted on behalf of the petitioner at bar that the impugned order suffers from vice of non application of mind. That on 12-4-99, when the impugned order was passed, the petitioner was in judicial custody. However, the detaining authority has failed to consider the less drastic remedy of opposing or claiming cancellation of bail, if granted to the detenu under Section 437(5) of CrPC and thereby, the subjective satisfaction reached by the detaining authority is vitiated and has rendered impunged order invalid.
#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court

(Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, the detaining authority has observed in last but one para the fact that the petitioner / detenu is in judicial custody but he has further observed that in all probabilities, the petitioner is likely to apply for bail and having got himself released on bail, is likely to continue his antisocial activities. That the said observation is based on mere apprehension without any material on record and that there is no averment in the grounds which discloses that the detaining authority has ever considered the less drastic remedy like opposing the bail or claiming cancellation of bail if granted by the Court. Under these circumstances, I am constrained to hold that the impugned order is bad in law on account of above stated non application of mind.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 12-4-1999 passed by respondent No.1 - the Commissioner of Police, Ahmedabad City against the petitioner is hereby quashed and set aside. The petitioner-Kunj Bihari alias Kishan Bachubhai Parmar (Vankar) is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 12-1-2000 [A.K.Trivedi, J.]

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